IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NOs.68318, 68320, 68322, 68324 and 68326 M OF 2005

DATE OF DECISION: JANUARY 29, 2007

Sanjay Jain and another

.....Petitioners

VERSUS

M/s Aravali Trading Company, Rewari

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. K. K. Aggarwal, Sr.Advocate with
Mr. Kapil Aggarwal, Advocate,
for the petitioners.

Mr. J. S. Yadav, Advocate,
for the respondent.

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RANJIT SINGH, J.

This order shall dispose of abovesaid five petitions. The facts are being taken from Criminal Misc. No.68318 M of 2005 (***Sanjay Jain and another Vs. M/s Aravali Trading Company, Rewari).***

The petitioners, who are husband and wife, are statedly working as Chairman-cum-Managing Director and Director respectively of M/s Rajasthan Breweries Limited. They have jointly filed the petition for quashing of the complaint dated 27.9.2002, Annexure P-1, and the summoning order dated 16.7.2005, Annexure P-2.

The complainant was appointed as the Marketing Agent of M/s

Rajasthan Breweries Limited for the State of Haryana to promote the sale of beer being produced by the Company of the petitioners under the name and style of `Stroh's Premium Lager & Stroh's Super Strong'. For this purpose, a written agreement was made on 2.6.1998. A sum of Rs.25 lacs was paid by the complainant to the accused-petitioners. Subsequently, differences arose between the petitioners and the complainant, leading to filing of 12 different complaints in the Court of Additional Chief Judicial Magistrate, Rewari, pertaining to some cheques issued by the petitioners. A process was issued by the Court on 16.7.2005. Earlier the dispute had been settled with an understanding that the petitioners would pay a sum of Rs.21 lacs to the complainant-respondent. A sum of Rs.3 lacs was paid in cash, leaving the balance of 18 lacs to be paid. 12 cheques amounting to Rs.1.50 lacs each were issued in favour of the complainant to discharge the liability of Rs.18 lacs. These cheques, however, were not honoured when presented. Subsequently, the petitioners had paid Rs.1 lac in cash and Honda car valued at Rs.5 lacs to the complainant. In this manner, Rs.12 lacs remained to be paid by the petitioners to the complainant. An understanding was reached between the parties, requiring the petitioners to pay an amount of Rs.12 lacs. For this purpose, the petitioners agreed to pay a sum of Rs.2 lacs by way of monthly instalments payable by 10th of every month. In response, the complainant agreed to withdraw two criminal complaints from the Court at Rewari on receipt of Rs.2 lacs as monthly instalments. In this manner a total sum of Rs.12 lacs was paid by the petitioners to the complainant. The complainant, on his part, had agreed to

withdraw all the 12 complaints pending before the Court at Rewari. A copy of this agreed arrangement is annexed with the petition as Annexure P-3.

The grievance of the petitioners is that the complainant has withdrawn 8 complaints out of the total 12 upon receipt of payment but has refused to withdraw remaining four complaints, though he has received full payment of Rs.12 lacs. In this manner, the complainant has got issued a process against the petitioners. They have also been summoned through an arrest warrant issued by the Court on 2.1.2006.

While issuing notice of motion, the above-noted factual position was taken note of by the Court and operation of the order dated 30.11.2005 was stayed. The petitioners were directed to appear before the trial Court, which they did. On 5.5.2006, the proceedings before the trial Court were also stayed. The respondent-complainant has filed reply.

Counsel for the respondent has tried to make out a case that full payment due, as agreed by the petitioners, was not released, though it is conceded that a sum of Rs.12 lacs, as agreed in terms of order, Annexure P-3, has been paid by the petitioners. It is contended on behalf of the respondent-complainant that Honda car agreed to have been transferred, in fact was not given to the respondent and it is on this count that an attempt is made to justify action and conduct of the complainant in not withdrawing the remaining four complaints.

Learned counsel for the parties have been heard.

Concededly, the parties have agreed to settle their

dispute arising out of dishonouring of cheques. It is also not disputed before me that agreement dated 10.2.2004, Annexure P-3, was reached between the parties. It can further be noticed that this agreement was acted upon. Counsel for the respondent-complainant further admitted before the Court that 8 complaints, out of the 12, had been withdrawn on receipt of the payment in terms of agreement. This is a clear indication that the agreement, Annexure P-3, had been acted upon. The objection raised on behalf of the respondent in not withdrawing the remaining 4 complaints on the ground that Honda car stated to have been given in fact had not been handed over can also not be accepted. Para 4 of the agreement, Annexure P-3, would clearly indicate that this formed part of the written agreement between the parties. This Clause reads as under:-

> "A final settlement agreement was signed on 19th day of August, 2001 between the Party No.1 and Party No.2. As the full and final amount of Rs.21 lacs (Rs.Twenty one lacs) was settled, out of the above, Rs.4 lacs (Rupees four lacs) has been paid by cash/DD and Rs.5 lacs (Rs.Five lacs) by giving a Honda car."

The respondent as such cannot now be heard saying that car had not been given to him once he had signed the agreement, Annexure P-3, where this fact had been conceded by him in writing.

Learned counsel for the petitioner is justified in relying on the observations of the Hon'ble Supreme Court in the case of ***Ruchi Agarwal Vs. Amit Kumar Agrawal,*** 2004(4) RCR (Criminal) 949, to say that after having reached the compromise, the

respondent cannot be permitted to back out therefrom and then allowed to pursue the complaints and prosecution of the petitioners. In Ruchi Agarwal's case (supra), husband and wife, who were litigating by way of criminal and civil proceedings arising out of matrimonial dispute, had reached a compromise, on the basis of which, a divorce by mutual consent was obtained. Thereafter, wife did not withdraw FIR under Sections 498A and 506 IPC against the husband despite the compromise. In this background, the Hon'ble Supreme Court termed the action of the wife in continuing with the proceedings, to be an abuse of process of the Court especially so when on the basis of the compromise, she had obtained decree of divorce by way of mutual consent. Similar observations can be noticed from the case of ***Mohd.Shamim Vs. Smt.Nahid Begum***, 2005 (1) RCR (Criminal) 697. This was also a case where wife backed out stating that agreement and the affidavit were got signed from her by mis-representation. The Hon'ble Supreme Court, while relying upon Ruchi Agarwal's case (supra), held that conduct of the wife in continuing the criminal proceedings would be an abuse of the process of the Court. In the present case also, the complainant has entered into an agreement with the petitioners. This agreement has been acted upon. The complainant-respondent has conceded the receipt of sum of Rs.12 lacs. Receipt of remaining amount due has also been acknowledged, as can be noticed from the terms of the agreement, Annexure P-3. He has also withdrawn 8 complaints out of the total 12. Can under these circumstances, he be permitted to prosecute the 4 complaints, which he has refused to withdraw despite the agreement? Following the ratio of law laid down by the

Hon'ble Supreme Court in the cases of Ruchi Agarwal and Mohd. Shamim (supra), I am of the view that allowing the respondent-complainant to continue these proceedings against the petitioners would be nothing but an abuse of the process of Court.

It may need a notice that Since FIR No.80 dated 7.7.2001 under Sections 420, 120-B IPC, registered at Police Station Model Town, Rewari (in Criminal Misc.No.68322 M of 2005), has also arisen out of the same transaction, as noticed in the complaint cases, the petitioners have sought quashing of same on the ground of compromise. In addition to the compromise, it will also be a matter of of consideration as to whether the complainant could competently file complaint under Section 138 of the Negotiable Instruments Act, 1881 and also lodge an FIR for the same transaction, as has been done. I need not go into this aspect as the quashing of the FIR has also been sought basically on the ground of a compromise whereby the entire liability standing against the petitioners has been discharged.

Accordingly, all the petitions are allowed. The complaint, Annexure P-1 as also the summoning order, Annexure P-2 are quashed. The FIR No.80 dated 7.7.2001 under Sections 420, 120-B IPC, P.S.Model Town, Rewari and so also the subsequent proceedings (in Criminal Misc.No.68322 M of 2005) are also ordered to be quashed.

January 29, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**